



Crl.O.P(MD)No.8410 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P(MD)No.8410 of 2018

and

Crl.M.P(MD)No.3757 of 2018

1.K.Thangavel
2.A.Ghulam
3.Guruvenkatraj

.. Petitioners/Investigation
Officer P.W-14 to P.W-16

Vs.

1.The State represented by,
The Inspector of Police,
Tirunagar Police Station,
Madurai.
In Crime No.695 of 2009

.. 1st Respondent/Defacto
Complainant

2.Saraswathi

.. 2nd Respondent/P.W-1



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3.Chandrasekaran

.. 3rd Respondent/Accused

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, 1973, to set aside the direction and to expunging the remarks passed against the petitioners in S.C.No.319 of 2017 on the file of the IV-Additional District and Sessions Judge, Madurai, dated 24.04.2018.

For Petitioners : Mr.K.Samidurai

For Respondents : Mr.M.Sakthi Kumar

Government Advocate (Criminal side)
for R1

ORDER

This petition has been filed to set aside/expunge the remarks made by the IV-Additional District and Sessions Judge, Madurai, in S.C.No.319 of 2017, dated 24.04.2018 whereby the trial Judge has directed disciplinary proceedings to be initiated against the petitioners



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and to recover the compensation amount payable by the State from the salary of the first and third petitioners and from the pension amount of the second petitioner.

2. The petitioners are Investigation Officers, who were involved in the Investigation in Crime No.695 of 2009, which ultimately resulted in a final report taken on file and ended in acquittal of the accused person from all charges in S.C.No.319 of 2017 through judgment and order, dated 24.04.2018. The grievance of the petitioners is that they had conducted the investigation in a proper manner and discharged their official duty and after the final report was approved by the District Public Prosecutor, it was laid before the trial Court. The case was based on circumstantial evidence and unfortunately, four of the witnesses turned hostile and the trial Court acquitted the accused person from all charges giving the benefit of doubt. While doing so, the trial



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Court without affording any opportunity to the petitioners, made adverse remarks against them and directed initiation of disciplinary proceedings and recovery of the compensation amount from their salary/pension. Aggrieved by the same, this petition has been filed before this Court.

3. Heard Mr.K.Samidurai, learned counsel appearing for the petitioners and Mr.M.Sakthi Kumar, learned Government Advocate (Criminal side) appearing for the first respondent/State.

4. Inorder to appreciate the reason as to why the trial Court directed initiation of disciplinary proceedings against the petitioners and recovery of compensation from their salary/pension, the relevant portions in the judgment are extracted hereunder:

“35. To sum up, the prosecution had refused to trace out the informant to VAO. The prosecution has not proved that the dead body belongs to



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Santhanakrishnan or not. Though it is stated that the family members have identified through photograph, that photograph has not been produced before this court. The head and femur bone were not sent for superimposition. The photograph of Santhanakrishnan was not obtained from the family members by the police. The police have abstained from examining the management of the Velsell company regarding the bonus issue. The trip sheet of the lorry in which the deceased and accused were working was not obtained by the police to show that when the deceased finally attended the job. Arrest and recovery of Mo1 to Mo3 have not been proved by the prosecution. Weapon does not match with injuries found. The confession does not support the case of the prosecution due to mismatch of the injuries and the weapon seized. The confession itself is proved to be fabricated. The stage of the decomposition and the time of the alleged occurrence, is not within acceptable period. Scientific Assistant Ms.Stella was omitted to be



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examined. Non- availability of blood in the place of occurrence, lorry and the place where the body was found leads to serious doubt. All three IOs abstained from finding out the informant to VAO adds to the doubt regarding the place and the time of the crime mentioned by the prosecution. All these discrepancies and lacuna on the part of the procution leads to a strong inference that the persons who had really committed the crime have been let free and this accused has been falsely implicated in this case and therefore he in entitled for acquittal.

36. Moreover, specific allegation was made by the accused that he was beaten by the police men in the Thideer nagar police station, by shoes and lathis. The accused himself has deposed as DW1 and he has stated that on 21.10.2009 after finishing his job he went to his home at 05:30 pm, and that at 06:00 p.m., three persons came in civil dress introducing themselves as police and took him to Thideernagar P.S. where he was beaten by the police and was



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kicked by bootlegs on his face and was beaten by lathis and his signatures were received by them in three blank papers and that he was produced before the Judicial Magistrate on 24.10.2009 at 04:00 p.m. He further stated that on seeing the injuries the Judicial Magistrate asked him the reason for those injuries and that the accused explained that he was beaten by the police with lathies and was also kicked with bootlegs and that the learned Judicial Magistrate after recording the same, had remanded the accused without sending him for medical examination and the certified copy of the Remand Report is marked as Ex.D1.

37. However, PW14 and PW15 have refused such allegations. Whether such allegations made by the accused against the police officers are true or not is not known and a separate inquiry on that aspect by higher police officials would be necessary. On seeing the Remand Report, find that the learned Judicial Magistrate has recorded the allegations, but he has not forwarded the accused for medical



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examination. Instead he had recorded that the accused had stated that he was already treated at Government Rajaji Hospital, Madurai. Instead of sending the accused for further treatment the accused has been directly remanded.

38. For violation of fundamental rights stated in Part III of the Constitution, such as right to life and liberty, protection against arbitrary arrests and illegal detention, protection from discrimination and unequal treatment etc, the courts have repeatedly held the police liable under public law and have imposed pecuniary liability on the State as compensation for the harm caused. A series of Supreme Court judgments beginning from the early 1980's laid the foundational principles for holding the State liable for police misconduct and abuse of power, making pecuniary compensation a significant remedy for such violation of fundamental rights.

47. Therefore, this court finds that, by invoking the inherent power which is available within itself and



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in absence of any bar under any enactment to direct payment of compensation to the accused, this court can direct the state government to pay compensation to the accused due to the violations committed by its subjects. Here the three IOs. Therefore this court holds that the accused would be entitled for a reasonable compensation for being falsely implicated in this case by the Police and for facing the ordeal of trial. Further, he was illegally remanded to Judicial custody from 24.10.2009 till 15.12.2009 in violation of his personal liberty, enshrined under Art 21 of the constitution. This relief would be in addition to the relief that could be sought for by the accused under any other law before any other legal forum. Because, It is also found that the prosecution has cleverly left out the true culprits to escape from the clutches of law and had made this poor man a scapegoat, by depicting him as a true culprit, by suppressing the true facts and by fabricating false documents like confession etc.



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48. Therefore this court directs the state government to pay a sum of Rupees one lakh as compensation to the accused within three months from the date of receipt of this order and the same shall be recovered from the salaries/Pension of the 3 Investigation officers, namely Mr.Thangavel Pw14, Mr Gulam Pw15[Retired] and Mr.Guruvenkatraj Pw16. In addition, the concerned authority is directed to initiate appropriate disciplinary proceedings against the above officials who are in service and other appropriate legal action against all the above three officers.

49. Due to the death of the victim Santhanakrishnan his dependents viz. his wife and two female children are deprived of his moral and financial support. Therefore, the dependents of the deceased shall be compensated adequately u/s 357(a) of Cr.P.C. The office is directed to send a copy of the judgment to the District Legal Services Authority, to assess and to recommend the State to award adequate compensation to the dependents of the deceased



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Santhanakrishnan.

In the result,

1. The Accused is found not guilty for the offences charged u/s 302 and 201 of IPC and the accused is acquitted u/s 235(i) of Cr.P.C.

2. The properties marked as MO1 and MO2 as per RPR No.10/2018 are ordered to be destroyed after appeal or on expiry of appeal time. MO3 Ashokleyland cement mixture lorry bearing registration No.KA-01-C-9862 has already been handed over to its owner on bond by the trial court and the bond is ordered to be cancelled after appeal or on expiry of appeal time.

3. The State Government is directed to pay a sum of Rs.1,00,000/- to the accused Chandrasekaran as compensation within three months from the date of receipt of this judgment and the said sum is ordered to be recovered from the salary of PW14 Thiru K.Thangavel, Inspector of Police and PW16 Thiru.Guruvenkatraj, Inspector of Police and the



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pension amount of PW15 Thiru.A.Ghulam, retired Inspector of Police. This court also directs the State Government/Director General of Police/concerned authority to initiate appropriate disciplinary action against the serving Police officers Thiru.K.Thangavel (Pw14) and Thiru.Guruvenkatraj (Pw16) and other appropriate legal action against all the above three officers.

The office is directed to forward a copy of this Judgment to the Chief Secretary, Govt of Tamilnadu and to the DGP of Police, Tamilnadu, for further action.”

5. The main thrust of the argument on the side of the petitioners is that they should have been given an opportunity before issuing the above directions. In the considered view of this Court, there is a fundamental flaw in not properly understanding the difference between disparaging/harsh remarks and the power given to a trial Court



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to make such remarks on a faulty/slipshod investigation and consequently, directing appropriate action to be taken against the erring Investigation Officer. When the former is done, it calls for an opportunity and in the latter, no such opportunity is even contemplated. The facts of the present case falls in the latter category.

6. The law on this issue was considered by this Court in extenso in ***K.Muthupandi vs. State*** reported in **2020 (1) MLJ (Crl) 53** and the relevant portions in the judgment are extracted hereunder:

“15. A close reading of the above judgments brings out one crucial factor with regard to the circumstances under which such a finding can be given. Such a finding can be given where it is necessary for the decision of the case and it is an integral part thereof, to animadvert on that conduct. If the Court can take a decision in a case, even without commenting upon the conduct of a person



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involved in the case, it would be proper to deal with the merits of the case and render the decision, rather than making disparaging remarks against a party. This is more so in cases where such a party is not even before the Court and the remarks itself has been made behind the back of such a party.

16. Such remarks cannot also be made in cases where some mistakes have been committed while discharging the official duty and there is no evidence or circumstance to show that there were any mala fides on the part of the officer concerned.

17. It is true that the Hon'ble Supreme Court in State of W.B. v. Mir Mohammad (supra), has cautioned courts from making unsavoury criticism against the Investigating Officers in a routine manner. The Hon'ble Supreme Court has held that the Police are investigating cases under time constraints with an ill-equipped machinery and have to cope up with the traditional apathy. Therefore, before castigating the Investigating Officer, the Court must ensure that



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such remarks are absolutely necessary in a given case.

18. Giving an opportunity of hearing is not a rule which can be mechanically applied in all cases. It becomes a useless formality where a Court can render a finding based on the material and the conduct of the concerned officer who has very much available before the Court and the Court had closely observed his demeanor.

19. It will be very useful to take note of the judgment of the Hon'ble Supreme Court in State of Gujarat v. Kishanbhai and Others (supra) in this regard. The relevant portion of the judgment is extracted hereunder:

"17. The investigating officials and the prosecutors involved in presenting this case, have miserably failed in discharging their duties. They have been instrumental in denying to serve the cause of justice. The misery of the family of the victim Gomi has



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remained un-redressed. The perpetrators of a horrendous crime, involving extremely ruthless and savage treatment to the victim, have remained unpunished. A heartless and merciless criminal, who has committed an extremely heinous crime, has gone scot-free. He must be walking around in Ahmedabad, or some other city/town in India, with his head held high. A criminal on the move. Fearless and fearsome. Fearless now, because he could not be administered the punishment, he ought to have suffered. And fearsome, on account of his having remained unaffected by the brutal crime committed by him. His actions now, know of no barriers. He could be expected to act in an unfathomable savage manner, un-comprehendable to a sane mind.

18. As we discharge our responsibility in deciding the instant criminal appeal, we proceed to apply principles of law, and draw



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inferences. For, that is our job. We are trained, not to be swayed by mercy or compassion. We are trained to adjudicate without taking sides, and without being mindful of the consequences. We are required to adjudicate on the basis of well drawn parameters. We have done all that. Despite thereof, we feel crestfallen, heart-broken and sorrowful. We could not serve the cause of justice, to an innocent child. We could not even serve the cause of justice, to her immediate family. The members of the family of Gomi must never have stopped cursing themselves, for not adequately protecting their child from a prowler, who had snatched an opportunity to brutalise her, during their lapse in attentiveness . And if the prosecution version about motive is correct, the crime was committed for a mere consideration of Rs. 1,000/-.

19. Every time there is an acquittal, the



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consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the accused-respondent innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to



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suffer the turmoil of a long drawn litigation, spanning over a decade, or more. The expenses incurred by an accused in his defence can dry up all his financial resources - ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

20. Numerous petitions are filed before this Court, praying for anticipatory bail (under Section 438 of the Code of Criminal Procedure) at the behest of persons apprehending arrest, or for bail (under Section 439 of the Code of Criminal Procedure) at the behest of persons already under detention. In a large number of such petitions, the main contention is of false implication. Likewise, many petitions seeking quashing of criminal proceeding (filed under Section 482 of the Code of Criminal



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Procedure) come up for hearing day after day, wherein also, the main contention is of fraudulent entanglement/involvement. In matters where prayers for anticipatory bail or for bail made under Sections 438 and 439 are denied, or where a quashing petition filed under Section 482 of the Code of Criminal Procedure is declined, the person concerned may have to suffer periods of incarceration for different lengths of time. They suffer captivity and confinement most of the times (at least where they are accused of serious offences), till the culmination of their trial. In case of their conviction, they would continue in confinement during the appellate stages also, and in matters which reach the Supreme Court, till the disposal of their appeals by this Court. By the time they are acquitted at the appellate stage, they may have undergone long years of custody. When acquitted by this Court, they may have



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suffered imprisonment of 10 years, or more. When they are acquitted (by the trial or the appellate court), no one returns to them; what was wrongfully taken away from them. The system responsible for the administration of justice, is responsible for having deprived them of their lives, equivalent to the period of their detention. It is not untrue, that for all the wrong reasons, innocent persons are subjected to suffer the ignominy of criminal prosecution and to suffer shame and humiliation. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal prosecution.

21. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on



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the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned agencies will be able to successfully establish the guilt of the accused.

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every



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acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State



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Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures,



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in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

23. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into



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consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and



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prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

20. The above judgment was taken as the basis by the trial Court while making remarks about the petitioner in the judgment and recommending for taking disciplinary action. The Hon'ble Supreme Court after taking note of the deleterious consequences of an acquittal in cases involving serious offences, has held that such acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. If an accused person had succeeded in a case due to the lapses committed by an Investigating Officer, the Investigating Agency must be deemed to have messed up the case, resulting in failure of justice. In all such cases, the erring officer must suffer the consequences, for his lapses. The Hon'ble Supreme Court has categorically held that in such cases departmental action must be initiated against the Investigating Officer and he should be withdrawn



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from investigative responsibilities temporarily or permanently depending upon his culpability. This is the only way in which seriousness can be infused in performing investigation in all criminal cases. Till courts become strict in following such a practise, the slipshod investigations are going to continue and it will seriously impair the criminal justice system.

21. In the considered view of this Court, the trial Court was perfectly right in making the remarks against the petitioner and recommending for taking disciplinary action against him. The petitioner was very much present before the trial Court and he had an opportunity to explain himself during the course of trial. The trial Court found that the evidence on record reflected the conduct of the petitioner, justifying such remarks. That apart, such remarks was necessary for taking the decision in the case, since it was an integral part thereof to animadvert on that conduct of the petitioner.

22. The judgments cited by the learned counsel for



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the petitioner dealt with cases where such adverse remarks were made against persons who were not before the Court or in cases where the decision did not require such adverse remarks or where the concerned officer had bona fide performed his official duty and in the course of which, some mistakes were committed. The facts of the present case did not require the trial Court to give an opportunity to the petitioner, before making the remarks in the judgment.”

7. It is clear from the above judgment that where the acquittal itself was due to serious lapses on the part of the Investigation Officer and the Court has to necessarily give a finding in that regard by commenting upon the slipshod investigation, there is no requirement to give an opportunity since the evidence on record reflected the conduct of the Investigation Officer and the remarks was an integral part thereof to animadvert on that conduct of the Investigation Officer.



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8. In view of the above discussion, this Court is not in agreement with the submission made by the learned counsel for the petitioners to the effect that the petitioners ought to have been given an opportunity before such remarks were made by the trial Court in the judgment. The second petitioner has already retired from service and he is drawing pension. Hence, there is no question of initiating any disciplinary proceedings after his retirement or recovering the compensation from the pension amount. Hence, even though this Court is not interfering with the findings of the Court below insofar as the second petitioner is concerned, the directions issued becomes unworkable due to the subsequent development wherein the second petitioner had already retired from service.

9. Insofar as the third petitioner is concerned, he did not



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really conduct any investigation in this case. He got into the investigation during the final stage of filing the final report. The third petitioner took over the case files on 28.07.2010 and he gave the final report for getting opinion from the District Public Prosecutor on 30.07.2010 and after obtaining opinion, he laid the final report before the concerned Court. Hence, no negligence can be attributed against the third petitioner. Consequently, the directions issued for initiating disciplinary proceedings and for recovery of the compensation from the salary cannot be made against the third petitioner.

10. In view of the above, the initiation of departmental proceedings and the recovery of compensation from the salary can be effectively implemented only as against the first petitioner. It is always left open to the first petitioner to put forward all his defence as and when the disciplinary proceedings are initiated against him. The learned



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counsel for the petitioners attempted to raise such defence in this petition and this Court made it clear that it cannot take the role of the department/employer and deal with the same. Such an exercise will tantamount to exceeding the scope of this petition.

11. In the result, this Criminal Original Petition is disposed of in the above terms. Consequently, connected miscellaneous petition is closed.

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1.The IV-Additional District and Sessions Judge,
Madurai.

2. The Inspector of Police,
Tirunagar Police Station,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

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